

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO MARTIN,

Plaintiff, No. CIV S-05-0557 DFL JFM P

vs.

ALVARO C. TRAQUINA, et al.,

Defendants. FINDINGS AND RECOMMENDATIONS

Defendant G. Toppenberg's death has been suggested on the record. See Order filed February 6, 2006. Pursuant to Federal Rule of Civil Procedure 25, a motion for substitution of a proper party must be made no later than ninety days after the death is suggested upon the record. That time period has now expired, and no motion for substitution has been filed.

Accordingly, IT IS HEREBY RECOMMENDED that all claims against defendant Toppenberg be dismissed from this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after service of these findings and recommendations, any written objections may be filed with the court. The document should be captioned "Objections to Magistrate Judge's Findings

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1 and Recommendations.” Failure to file objections within the specified time may waive the right
2 to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: March 15, 2007.

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5 **UNITED STATES MAGISTRATE JUDGE**
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